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5 Attorney for Plaintiffs  
6 Telitha Ball, et. al.

7 UNITED STATES DISTRICT COURT  
8

9 NORTHERN DISTRICT OF CALIFORNIA

10 Telitha Ball, et. al.,  
11 Plaintiffs

12 Action No. 08-02831-MHP

13 Notice of Motion for Order  
14 Remanding the Case to  
15 State Court and for an  
16 Order for payment of Costs  
And attorney fees

17 City and County of  
18 San Francisco, et al.  
19 Defendants

DATE: Aug 11, 2008  
TIME: 2:00p.m.  
PLACE: Courtroom 15  
Judge:  
Hon. Marilyn H. Patel

22 \_\_\_\_\_/  
23  
24 Notice is hereby given that plaintiffs herein will  
25 move this court on Aug 11, 2008 at 2:00p.m. in  
26 Courtroom 15 for an order remanding the above matter to  
27 state court. Plaintiffs will also seek an order

1 requiring defendants City and County of San Francisco  
2 to pay costs and attorney fees.

3 The motion will be made on the basis that the  
4 notice of removal is defective. 28 U.S.C. 1446, 28  
5 U.S.C. 1447.

6 The motion will be based on the points and  
7 authorities filed herewith, the declaration of Gregory  
8 M. Haynes, the file herein and on such other  
9 information as may be development at the hearing  
10 herein.

11

12 **Memorandum of Points and Authorities**

13 I

14

15 **THE COURT SHOULD REMAND THE MATTER TO**  
16 **STATE COURT BECAUE THE REMOVAL IS**  
17 **PROCEDURALLY DEFECTIVE**

18 This is a motion to remand this matter to state court  
19 as a result of a procedurally defective removal.

20 On June 6, 2008, Defendants City and County of San  
21 Francisco and Police Chief Heather Fong, in her  
22 official capacity, removed this matter to federal court  
23 from state court.

24 On May 19, 2008, defendant Earnest Ferrando was  
25 served with First Amended Complaint and summons in this  
26 matter.

27 The notice of removal does not explain why all the  
28 defendants in the matter have not jointed in the  
removal.

1 A notice of removal that does not explain why  
2 all the defendants have not joined in the removal is  
3 defective. Prize Frize, Inc. v. Matrix (U.S.) Inc.(9<sup>th</sup>  
4 Cir 1999) 167 F3d 1261, 1266.

5 All defendants who have been served prior to the  
6 removal must join in the removal. Parrino v. FHP, Inc  
7 (9<sup>th</sup> Cir 1998) 146 F3d 699.

8  
9 Defendant Earnerst Ferrando did not join the  
10 removal within 30 dasy of May 19, 2008, and, in fact,  
11 has still not joined in the removal.

12 Since all defendants who have been served with the  
13 summons and first amended complaint in the state court  
14 action did not joint the removal (Parrino v. FHP, Inc  
15 (9<sup>th</sup> Cir 1998) 146 F3d 699) and because the notice of  
16 removal does not explain why all the defendants have  
17 not joined in the removal (Prize Frize, Inc. v. Matrix  
18 (U.S.) Inc. (9<sup>th</sup> Cir 1999) 167 F3d 1261, 1266), the  
19 removal from state court was procedural defective.

20 A motion to remand must be filed within 30 days  
21 after the filing of the notice of removal. 28 U.S.C.  
22 1447 (c).

23 Accordingly, as this motion is made within 30 days  
24 of the filing of the notice of removal and the removal  
25 is defective, this court must remand the matter to  
26 state court. 28 U.S.C. 1447 (c). (Prize Frize, Inc. v.  
27 Matrix In (9<sup>th</sup> Cir 1999) 167 F3d 1261, 1266)

1  
2                   THE COURT ORDER THE PAYMENT  
3                   OF COSTS AND ATTORNEY FEES  
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5                   When a matter is remanded to state court, the  
6 remand order may require the payment of just costs and  
7 expenses, including attorney fees, incurred as a result  
8 of the removal. 28 U.S.C. 1447 (c).

9                   In the current matter, the notice of removal is  
10 clearly defective. There is no explanation as to why  
11 defendants have not joined the motion. Indeed, even  
12 after advising defense counsel of the defect, the  
13 defect was not cured. Further, this motion is  
14 necessary as the defense counsel would not agreed to  
15 waive time to file a motion to remand, failed to agree  
16 upon an stipulation and appears to be planning to file  
17 yet another notice of removal.

18                   According, plaintiffs request costs and attorney  
19 fees in the amount of \$2400.00 as set forth in the  
20 declaration of Gregory M. Haynes, which have been  
21 incurred as a result of the improper removal.

22                   CONCLUSION  
23

24                   Since the removal is procedurally defective, this  
25 court should order the matter remanded to state court  
26 and require payment of the costs incurred as a result  
27 of the removal.  
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1 DATED:

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3 Gregory M. Haynes  
4 Attorney for Plaintiffs  
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